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1947.

File No. O. Watan 47

Legal Department—
A— **BRANCH**

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ject:— Opinions under the Bombay Hereditory offices Act 1874.

E/1-31

File No. O. Watan/47

27-A

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Legal Department File No. e. Watan /47

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It appears that S.No. 17 of Changespur (Mithakali)City Taluka, Ahmedabad, has been assigned for Patelki service. The land stands in the names of Dosaibhai Parshottam and two others. It appears that in or about the year 1908-9 Naranbhai Kalidas andothers contended before the xollector that they were permanent tenants were of S.No 17/1 as 17/8 and their rights of permanent tenants was recognised by the collector in 1909 andentries thereof were made. In the Record of Rights from 1911-12 to 1929-30 the permanent tenancy rights were entered, There are no orders for omission ofthat entry in thesubsequent Record of Rights. The Collector considers that the omission is due to oversight. The permanent tenants did not agitate presumably because they were unaware of theomission of the entry. Theoriginal record containing theCollector of Ahmedabad's Order of 1909 has been destroyed in theriots of 1919.

It appears that by a re intered lease dated 10th March, 1941, thepermanent tenants Naranbhai andtwo others have transferred their rights in S. Nos. 17/7 and 17/8 to one Sankalchand for 15 years on an annual payment of Rs . 130/- with a right to purchase their rights title and interest within that period on payment of Rs. 1-4-0 per sq. yds.yards .ankalchand applied to theRevenue authorities for entering his right in theRecord of Rights. The city Deputy Collector refused to recognise Sankalchand's rights observing.

> The permanent tenants Narankalidas, Bechar Harsi and others leased all their rights of permanent tenancy with a condition of sale during the period of 15 years on payment of Rs. 1-4-0 per sq. yard. The lessee is also allowed by thelessors under the said lease to put the said land under N.A.use. The Talati has asked for permission whether the saidright should be entered in the Record of Rights. The lease ispractically a sale and as the land is service inam land, the permanent tenants have no rights ro lease the permanent tenancy.

S.C. 4 Copies 5/6

it is, therefore, ordered that the said registered lease should notbe recognised.

On appeal theCollector confirmed the order of the City Deputy Collector for the following reasons.

"The main contention of the appellant is that N aran Kalidas and Bechar Narsi are permanent tenants and are in possession of the land for a long time and have only to pay the assessment of theland to the occupant watandar and that their rights as permanent tenants have been recognised by theCollector in 1915. The Collector's order of 1915, is not traced as the record was burnt in 1919. In the Mutation Register of 1916-17 to 1922-23, it is only remarked that the names were entered as permanent tenants under the orders ofthe Taluka Office. In the absence of any original order it cannot be said under what circumstances they were so treated. But thenames of permanent tenants are not recognised from 1930-31, onwards in the Records of Rights and no body has objected to this".

"In Madhavrao v. Raghunath, it was held that in the opinion of their Lordships neither the defendents nor their predecessors-in-title could have acquired any title to a permanent tenancy in the land by adverse possession as against the watandar from whom they held the lands. Similarly in Vishnu v. Tukaram, it has been clearly observed that a permanent tenancy cannotbe acquired by a tenant of watan property as against the holder of the watan. Thus the rights of permanent tenants cannot be recognised in watan lands. Again in Madhavrao v. Raghunath it has been heldby thePrivy Council that the grant of the right of permanent tenancy is an alenation within the meaning of the Watan Act. Thus thepresent lease of permanent tenant's rights is an alienation without permission andis not permissibleunder section 45 ofthewatan Act.

Against that order of the Collector Sankalchand has appealed to the Bombay Revenue Tribunal.

The Commissioner, Northern Division, oneof the members of the Revenue Tribunal. opines.

"In this case the question whether land or land revenue is alienated is not relevant. Even if it were so, it may be admitted that this is not a case of watan land of inferior village servants but a Patalki Watan. The presumption can be made only in the case of a land ofinferior village and not of Patels where the land is not subjected to scale judi as in this case. The alienation referred to by the Collector however is by one tenant (who has been recognised by theCollector as a permanent tenant) of his right to another. There is no question of alienation by the watandar to a non-watandar if that were thequestion then theCollector couldinterfere under section 5 and set aside the alienation.

"In 1909, the Collector recognised thepermanent tenancy of the present appellant's predecessors-in-title and the appellant only gets that right butit is a question whether that should be recognised".

The Revenue Tribunal has requested the R.L.A. to advise.

Before the Bombay Regulation XVI of 1827, the then existing

law was in favour of alienability in permanence as well as of the offices as of watan property appendentto them together or separately (Krishnarao v. Rangarao 4 B.H.C.R. (A.C.J.) Radhabai v. Anantrao I.L.R. 9 Bom. 198; Govind v/ Vithal, 33 I.L.R. 210 andRamchandra v. Adiveppa 34 Bom. L.R. 1131). Section 20 of Regulation XVI of 1827, declared that "the allowance derived by an hereditary officer shall in future be considered strictly as the official remuneration of the personfilling the office and forbiding its alienation by thesole incumbent of the office or any co-sharer of such office out ofthefamily". And XI of 1843 regulated the services of hereditary officers and provided for the assignment by the Collector of a portion of rentand profits of watan property for the maintenance of the officiator leaving the surplus to be participated in by the otherharers in the Watan. Regulation XVI of 1827, and Act XI of 1843, were repealed by the Bombay Hereditary Offices Act, 1874. By section 5 andsection 7 an alienation of a watan including the rights vested under the Act in representative watander or part of a watan was forbidden without the sanction of Government to any person not a watandar of the same watan and also of watan property assigned under section 23, as remuneration.

A lease in perpetuity is unknown in English law. In India such a lease is created by an express grant or by a presumed grant. If the origin of tenancy is not known, then the maxim optimus rerum interpres usus applies and long possession coupled with a uniform rent raises a presumption of permanancy. Such a tenancy is one by a presumed grant provided for by section 83 of the land Revenue Code, 1879. What was decided in Madhavrao v. Raghunath (25 B.L.R. 1005), was that persons who and whose predecessors-in-title have claimed to be and were tenants of service watan lands cannot acquire title to a permanent tenancy in thelands by adverse

possession as against the watandars from whom they hold the land and that a lease of watan property is an alienation within the meaning of Regulation XVI of 1827. It is, therefore, clear that an express grant of permanent tenancy of a watan land is prohibited by section 5 of the Bombay Hereditary Offices Act, and is invalid unless the grant was made prior to Regulation XVI of 1827. The decision in Madhavrao v/ Raghunath in no way effects permanent tenancy of watan lands by a presumed grant, that is to say, permanent tenancy of watan lands claimed by virtue of section 83 of the Bombay Land Revenue Code. Such tenancy is covered by the Bombay High Court decision in Shamrao v. Holya (39 Bom. L.R. 920). where Beaumont C.J. observed at p. 924 as follows.-

~~It is not known whether Naranbhai Kalidas and others set up by~~ ~~the Collector in 1909 permanent tenancy by express grant and if so~~ ~~before~~

It is to be noticed that under section 10 that alienation must be without the sanction of Government and indeed the only alienation of a watan which is forbidden by section 5 is an alienation without the sanction of Government. It is plain that where one is dealing with a claim to a permanent tenancy founded on section 83 of the BOMBAY Land Revenue Code by possession from time immemorial, and where from the nature of the case the origin of the alienation is lost in obscurity, it cannot possibly be proved that the alienation was made without the sanction of Government. For that reason alone I am of opinion that the alienation referred to in section 11 of the Watan Act, does not cover a title sought to be made under section 83 of the Bombay Land Revenue Code. Whether the alienation under section 11 would cover other cases of a title sought to be established by adverse possession it is not necessary for me to consider".

It is not known whether Naranbhai Kalidas, and others set up by the Collector in 1909, permanent tenancy by express grant andif so, before or after Regulation XVI of 1827, or by a presumed grant. Permanent tenancy by express grant after Regulation XVI of 1827, would of course be invalid, while the other two kinds of permanent tenancies i.e. by express grantbefore Regulation XVI of 1827, or by presumed grantunder section 83 of the Land Revenue Code would be valid and remain unaffected by section 5 of the Bombay Hereditary Offices Act, 1874. The view taked by the Collector tha the rights of permanent tenants cannotbe recognised in watan lands is not corre

A permanent tenancy of watan lands is an interest in the land. Section 5 ofthe Watan Act prohibits an alienationof watan property by a watandar to a non-watandar. If in the present case the

permanent tenancy of the watan lands is held valid, it means the creation of an interest in the land in xx favour of tenants permanents, who being non-watandars, would notbe precluded by section 5 of the Watan Act from alienating their right. The view taken by the Collector that "the present lease of permanent tenants' right is an alienation without permission and is not permissible under section 5 of the Watan Act". is not correct. The result is that the order of the City Deputy Collector confirmed in appeal by theCollector is not correct. The Revenue Tribunal may, therefore set aside that order. In doing so, whether they should order the entry of the appellant's name in the Record of Rights as lessee of permanent tenancy rights required further consideration. The lands involved appear to be assigned watan lands and section 8 to 11 of the Watan Act, are xxixx intended to safeguard the right of the State and the Collector can assert the right of theState at any time irrespective of the question of limitation (see. Tuka v. Ganu 32 B.L.R.. 1398). It is not known whether the Collector in recognising the rights of permanent tenancy in 1909, considered the full legal implications of such recognition. The entry of permanent tenancy made in the Record of Rights consequent on the recognition thereof by theCollector in 1909 has since been removed and unless that entry is restored, the appellant's rights of sub-tenancy cannot be entered in the Record ofRights. The Revenue Tribunal, while setting aside the order of the City Deputy Collector confirmed in appeal by theCollector, may order the Collector to hold an inquiry in connection with the permanent x tenancy of the appellant's predecessors-in-title andif their permanent tenancy rights are heldproved and permissible under the law as expounded above, to enter that right as well as the right of appellant in the Record of Rights. The

question of resumption of lands may depend upon the result of theinquiry.

Sd/

Remembrancer of Legal Affairs.

S.C. 6/6

11255/11/12/1946.

Submitted.

This case relates to the Patilki Watan of Hombal taluka Gadag, District Dharwar. The geneoligical tree of thefamily isas follows .-

Madangouda
1

1	1	1	1.
Lingangouda (Died 1904) --- Rangubai 1 Madangouda (Adopted in 1934) (Appellent)	Shankargouda 1 1 Bammangouda (Respondent)	Yellappagouda x	Rangangoud x

On the death of Madangouda, who was the Kakdar Patil of Hombal, his eldest son Lingangouda was recognised as the representative watandar. Lingangouda died in 1904 without leaving a male issue and in his place Bammangouda (Respondent) was entered as Kakdar in the year 1904, there being no other surviving members in the family. In 1934, Lingengouda's widow, Rangubai, adopted Madangauda, (Appellant) and applied to the Collector that the adoptee's name be entered in thePali Register. She was asked to produce a decree of a competent court to the effect that Madangouda was the nearest heir of the deceased Lingangouda in preference to Bammangauda. In the litigation which ensued and which ultimately went to the High Court (F.A.No. 10 of 1942) it was declared that Madangaouda was the representative watandar as he belonged to the eldest branch of thefamily. The appellant then applied to the Collector of Dharwar for entry of his name in the Pali Register as Representative Watandar of Hombal. The Collector however informed him on 27/10/1945 that he did not see sufficient justification for revising the entry made in 1904 in x favour of the Respondent Bammangouda. The appellant has now appealed to theCommissioner, Southern Divison, against the Collector's order.

2. The Commissioner S.D' is of the v iew that this case is on all force with theAlnavar case which became thesubject matter of theP.C. decision in Ananl Bhikappa Patil vs. Shankar Ramchandra Patil (46 Bom. L.R. P.C.) where it has been held that adoption of a son by the mother of the last male owner has theeffect of taking the estate out of the hands of the remote collateral andto constitute the adopted son the next heir of the last male owner, theonly difference being that in thepresent case the adoption took place 30 years after the death of .thelast male owner whereas in the Alnavar case it took place 13 years after the death of the last representative.

3. The question thereofre is whether it would be expedient to disturb the long standing arrangement. The R.L.A. is requested to advise in the matter.

Office of the R.L.A.

The attention of Revenue Department is invited to the Remembrancer of Legal Affair's opinion No. 9221 dated the 25th October 1941 where the question is fully considered, for the reasons stated therein there appears no legal objection to granting the appellant's request in the present case.

Sd

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1176 , dated the 5th February 1947.

S.C 6/6

p. 65-71 ante.

The facts are fully stated in letter from the Commissioner, C.D. No. L.H.D. 1/1089, dated 9,4.1946, and in letters Patent Appeal No. 39 of 1939.

P. 49-50 of Collector Mahalkari slip S.

The H.L.A. is requested to advise whether the view expressed by the Commissioner, C.D in paras. 6 and 7 his letter is correct.

In para. 6, the Commissioner, C.D. inter alia xx states thus .-

"This ruling is undoubtedly against the decisions taken by Government in thepast but unless this ruling is challenged and is got cancelled in a test case it is binding on all concerned. The question, therefore, is whether Government should, or should not, adopt that course in a case like the present one. The watans of District Hereditary Officers, such as Deshmukhs, Deshpandes, Naikwadis etc. having been settled under the Gordon Settlement are, besides being governed by the law of theparties and Act V of 1886, further governed by the terms of the sanad issued to the, This settlement is in thenature of a contract between Government and the watandar and is thus binding on both. According to the conditions of the sanad these watans are to be continued hereditarily by the British Government so long as the holders and their heirs continue to be faithful subjects of the British Government/and and pay the yearly fixed dues to Government and so long as there shall be in existence any maleheir to the watan, lineal, collateral or adopted within the limits of the watandar family. In this case, the Deshpande family of Junner is still in existence, and Government's interest in theproperty has not been altered by this decision. The watan character of the property, though in thepossession of outsiders, is not changed and the watan property will be continued in the

possession of outsiders, as x long as the Deshpande family is in existence. For the reasons given above, I am of opinion, that there is nothing in the judgment of the High Court affecting the basic interests of Government in the watannor can I see that the interests of the original watandar have been materially affected. There is no advantage in moving theHigh Court to reconsider their judgment in appeal No. 39 of 1939."

S .C. 6/6

Office of the R.L.

Seen and returned.

Sd/

Remembrancer of Legal Affairs.

U.R. to R.D. 1604 , dated the 17th February 1947.

S.C. 6/0

It appears that the Patilki watan lands in Solsumbha village, Taluka Umbergaon, admeasuring 57 acres and 19 gunthas assessed at Rs. 72-15-0 are assigned under section 23 of the Bombay Hereditary Offices Act, 1874, for the remuneration of the officiator. Mr. Laxman Purushottam Pimputkar is the sole representative watandar of Solsumbha. He had has, been appom appointed to officiate or Patil (Revenue and Police) from 6-1-1 1942. In 1911, the joint family property of the Pimputkars ms was partitioned between the coparceners without the consent of the father of Laxman, the then sole representative watandar, and the Patilki lands were assigned to the shares of the coparceners Dhondo Shivram Pimputkar and Trimbak Laxman Pimputkar. The partition deed, it appears, was signed by all the adult members except the father of Laxman as he was opposed to thepartition of the Patilki watan property. He, however, applied to the Collector in 1915 for restoration of thePatilki watan property to him, but was unsuccessful. In 1916, the Assistant Collector appointed on e Mr. N.V.Pimputkar and ordered that he should be put in possession ofthe Patilki lands. Against this, the persons in actual possessionappealed and the Collector in 1919 passed an order levying full rent at Rs. 240/-. In 1924, it appears, Laxman's father again applied to the Collector for restoration of the lands, but his application was rejected. His appeal to the Commissioner was also rejected. In 1944 Laxman applied for the restoration of the lands. Agreeing with the recommendations of the Collector and the Commissioner, N.D., Government issued orders on 9th October 1946 for restoration of the Patilki lands to Laxman Narayan Dhondo Pimputkar, Dattatraya Trimbak Pimputkar and Prabhakar Laxman Pimputkar, who are in possession of the

Patilki lands by virtue of partition made in 1911, have now applied to Government for cancelling the orders dated 9th October 1946 contending that the order of restoration is illegal and ultra vires; that they have developed lands at a considerable cost and constructed permanent structures thereon costing more than Rs. 30,000. H.M.(R) in his minutes at pages 99-100 observes.-

> In this case it is necessary to take R.L.A's opinion about the legality of the orders now issued as the Collector had recognised the partition and ordered only rentto be recovered. I do feel that these orders were illegal but I should like to make sure.
>
> R.L.A. should be asked to let us know whether thepartities was legal, whether it is now binding on the parties and on the Government and whether the present orders are in accordance with law and will ~~xixxx~~ ~~xxixgal~~ sut stand a legal suit.
>
> In the meanwhile the orders may be stayed".

The papers are sent to the ~~R~~ R.L.A. for advice.

The question that arise for consideration are .-

(1) Whether the partition of 1911 was legal and whether it is binding on theparties and on Government are ~~legal~~

(2) Whether the presentorders of Government are legal and whether they will stand in a Court of law.

There are no express provision in the Bombay Hereditary Offices Act, 1874, prohibiting partition ofwatan property. Section 7, however, provides that watan property assigned under section 23 (of this Act) as remuneration to an officiator and theprofits of watan property so assigned shall not be alienated or assigned to any person whatever without the sanction of Government This provision apparently contemplates prohinition of the assigned watan property from being partitioned without the sanction of Government. Under section 11(A) read with section 10, the Collector may either resume

possession of alienated property or may levy any rent due from the alienee. The Act reserves the right of the Collector to provide for the remuneration of the officiator (see sections 8 and 23). Reading these provisions together it appears that there may be cases where a partition of the assigned watan property may be allowed subject to the condition of providing for remuneration of the officiator. Sections 8, 9, 10, 11, 11A, 12 and 13 sufficiently safeguard the rights of the State, and the Collector can assert the right of the State at any time irrespective of the question of limitation; see Tuka vs. Ganu 32 B.L.R. 1398. If then theoriginal family of watandars have allowed themselves to be ousted so long or in such wise that they can no longer assert their right against theintruders, theresult is notto destroy the latent ultimate right of thedonor as reversioner, i.e. the government but to bring the reversionary right into immediate operation." (see G.R No. 6890 of 1889). It is no doubt true that in the present case the partition of the Patilki lands was done in 1911 and since then neither Laxman nor his father ever took any steps to challenge it in a court of law, and consequently Laxman's rights to sue for any relief are already barred by limitation. But theBombay Hereditary offices Act provides for no such limitation and under section 12 it is competent for the Collector either to resume lands orto levy any rent. It follows, therefore, that the partition is not binding on Government although it would not be possible for Laxman to challenge it in a court of law.

2. Section 10 of the Bombay Hereditary Offices Act inter alia provides for powers of the Collector to issue a certificate when it shall appear to the Collector that by virtue of, or in execution of, a decree, or order of any British Court any watan or any part thereof, or any of theprofits thereof, recorded as ....

such in the Revenue records or registered under this Act, and assigned under section 23 as remuneration of an officiator, has or have, after the date of this Act coming into force, passed or may pass without the sanction ofGovernment into the ownership or beneficial possession of any person other than theofficiator for thetime being. Section 11 provides that when any alienation of the nature described in section 10 shall take place otherwise than by virtue of, or in execution of a decree or order of any British Court, theCollector shall, after recording his reasons in writing, declare such alienation to be null andvoid. Section 11 A provides the Collector shall either summarily resume possession of all property to which an order of a Court passed on receipt of hiscertificate under section 10, or his own declaration under section 11, relates, or assess it at the rate prescribed in clause 2 of section 9, as he may think fit, and the said property shall thenceforward revert to thewatan. Under section 12 it shall be lawful for the Collector whenever it may be necessary in carrying out theprovisions of sections 8, 9 and11 --

(a) to summarily evict any person wrongfully in possession of any land, or

(b) to levy any rentdue by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand.

In Dattatraya Keshav Deshpande vs. Laxman Chimnaji 23 B.L.R. 561 it was held "When the Collector assesses full renton watan lands under section 9(2) of the Bombay Hereditary Offices Act, 1874, the property reverts to the watan under section 11A of the Act which means that the rent must be paid by theperson in possession and that it must go to the watandar as profits of the

lands. Whether the restoration of watan lands should be by resumption or by levy of rent would depend on the circumstances of each case, and the civil court will have no jurisdiction to set aside or avoid any such order (see para. 3 of section 4(a) of the Bombay Revenue Jurisdiction Act, 1879). Consequently the present orders passed by Government restoring possession of the watan lands to Laxman cannot be challenged in a court of Law. But as stated above, it is a matter of discretion whether the watan lands shouldbe resumed or full rent should be levied, and this descretion will have to be exercised having regard to thefacts and circumstances of each case. In the present case the watan lands went out of possession of Laxman's family by virtue of partition deed in 1911, and since then thepetitioners, that is, Narayan Dhondo Pimputkar and others have been in possession. In 1919 the Collector did not think it advisable to resume possession of the watan lands and considered that "it would meet the case if the full renton these lands was paid to the officiator." The petitioners have been contending that they have invested money in improving the lands and have built permanent structures thereon at considerable cost. If these facts are true, it may be considered inequitable to resume possession of thelands. There is, however, another point which requires also some consideration. The Collector has levied Rs. 240/- as rent of the watan lands for the remuneration ofthe officiator. But in view of the Bombay Tenancy Act, this rent may possibly be revised by the Collector under clause (2) of section 9 of the Bombay Hereditary Offices Act in which case the rent will have to be considerably reduced. In the circumstances, it is for Government to decide whether resumptions of the watan lands or the levy of rent would be more

appropriate.

Sd/

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3105 , dated the 29th March 1947.

Office of the R.I.A.

It appears that Ghorpade estate which is a watan property is Satara District has been under the management of the Court of Wards since 1940 after the death of the previous holder Khanderao Ramchandra Ghorpade, who left behindhimone son Mahipatrao by his first wife and five sons viz. Harajirao, Rajasaheb, Babansaheb, Jayashingrao and Anandrao by his second wife Mhalsabai, The dispute between the six sons about the share in the property was referred to the Civil Judge, Senior Divisbon, Satara for decision in Special Civil Suit No. 3 of 1943. That dispute was ultimately settled amicably and a final decree has been passed by the Court whereby Mr. Mahipatrao, the eldest son by the first wife, has been given 1/3 share in theproperty, while the other five sons have been each givenan equal share in the remaining 2/3 of the property. At present those five sons have also partitioned the property. Mr. Rajasahen, one of the five sons by the second wife Mhalsabai has now applied to Government for permission to go in adoption into another family and has expressed a desire that after his adoption, hisshare should be distributed among his four brothers. The Collector and the Court of Wards considers that Mr. Rajasahen cannot so assign his share in the property without the sanction of Government under section 38 of the Court of Wards Act. In its note at p. 175 ante R.D. observes.-

"Now Mr. Rajasaheb, one of the sons of the deceased Khan derao, wants to go in adoption and therefore requests Government to grant him permission for so doing. He further requests Government that his share in the property may be distributed among hisfour brothers i.e. the remainingGovernment wards . The Collector and the Commissioner recommend request of the ward. Mr.

Rajasaheb is 26 years old and his mother has no objection to giving him in adoption. Government may not object in this and the proposed adoption may be sanctioned. As regards thedistribution of Mr. Rajasaheb's share the property among his four brothers i.e. Government wards it may be stated that an adoption Mr. Rajasaheb will cease to belong to the Thorpade family andwill not be entitled to his share in the watan property which will vest in the watan family as a whole, distributable among the remaining shares according to the personal law of theparties. No Government sanction be granted to the proposal of theCollector (concurred in by the Commissioner) who may be apprised of the position mentioned above and requested to take action accordingly."

The draft orders at p/ 177 ante are shown to the R.L.A. before issue.

2. So far as the permission ofGovernment to Mr. Rajasaheb to go in adoption into another family is concerned, the view taken by R.D. is correct. There being no law empowering Government to pro hibit any person from going in adoption into another family, it appears that, strictly speaking, no permission of Government wouldbe necessary. However, there is no objection to informing Mr. Rajasaheb that Government has no objection to hisbeing adopted in another family.

3. In Dattatraya Govind 40 Bom. p. 429 the Bombay High Court has held :-

> "under Hindu Law, when a boy is givenin adoption he loses all the rights he may have acquired to the property ofhis natural father including the right to the property which has become exclusively vested in him before the date of his adoption."

S.C

Mr. Rajasaheb inherited the share in the watan property as heir of his deceased father (see Vithaldas v. Shrinivas 36 Bom. L.R. p. 169). Consequently, on his adoption Mr. Rajasaheb will lose all interest in his share in the watan property, which has been allotted to him in the partition , but it will notbe correct to say that his share will vest in the watan family as a whole distributable among the remaining sharers according to custom of the Watan and failing such custom according to thepersonal laws of theparties. In the Special Civil Suit No. 3 of 1943 filed by Mahipatrao against his brothers, the Ghorpade estate has been treated as partible. If so, after the adoption of Mr. Rajasaheb the property vesting in him will go to his next heir in the family of his birth according to theorder of succession to males in the Bombay Presidency. Consequently, mother Mhalsabai would be entitled to hold the property of Mr. Rajasahen during her life time (see section 2 of Act V of 1886), and after her death the property will go to Mr. Rajasaheb's brothers of the full blood that is to say, Hirajirao, Rajasaheb, Babansaheb Jayashingrao, Anandrao, Mahipatrao being brother of the halfhis blood can claim no share in the property of Mr. Rajasaheb along with or in preference to the latter's brothers of the full blood. (see Mulla's Hindu Law, p. 81.)

Sd/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6935 , dated the 7th July 1947.

Office of the R.L.A

Mr. Balaji Govind Mutalik Desai of Dharwar is the holder of Pargana watan land under a Gordon settlement and has applied to Government forpermission to adopt his wife's brother's son, an outsider, on payment of an annual nazarana at one anna per rupee of the total amount according to condition 3 of the Sanad, It appears that there are no other members alive except the applicant in the watan family. The question raised for the consideration of the R.L.A is whether Government refuse permission.

The Sanad granted in the present case imposes the following conditions.

"The said lands and cash allowances shall be continued without demand of service and without increase of land tax etc., so long as any male heir to the watan lineal collateral or adopted, within the limits of the watandar family shall be in existence.

2nd - No Nazarana or other demand on thepart of Government will be imposed on account of succession of heirs, lineal collateral, or adopted within the limits of the watandar family and permission to makesuch adoptions need not hereafter be obtained from Government.

3rd - When all the sharers of the watan agree to request it, then the general privilege of adopting at any time any person (without restriction as to family) who can be legally adopted, will be granted by Government to the watan on thepayment from that time forward, in perpetuity of an annual Nazarana of one anna in each rupee of the above total emoluments of the watan."

The use of the word "will" (and not "shall") in condition 3 clearly indicates that there is no obligation on Government to grant the general privilege of adoption outside the watan family. Consequently it would be open to Government to refuse sanction to the adoption of an outsider in the present case. But if the applicant makes the adoption notwithstanding the Government's refusal of permission, it is doubtful whether

after the death of the applicant Government would be able to resume the watan from the adopted son (see the observations of Wadia J in Ramshappa v. Secretary of State ~~in~~ 39 B.L.R. 851 at pate 866). Even assuming that Government has such power, Government would, at the most be able to levy fall assessment from the adopted son. In view of this legal position it is for Government to decide whether the permission should be refused when the applicant has offered to pay nazarana.

Sd/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7180 dated the 12th July 1947.

S.C. 6/6

Submitted

2. Please see petition of Siddi Mahmad Hayat wd. Siddi Abdulla Patil of Cholachgad, taluka Badami, Bijapur District at pp. 1-21. ante and the Collr's report thereon at pp. 73-77 ante. It appears from this report that there were three branches in the family of Siddisab, theoriginal acquirer of the watan of Cholachgad and Nagral prior to 1883. At the time of the Hak Enquiry in 1883 the family of opponent was recognised as the sole representative watandar after considering the evidence and documents produced by the ancestors of the applicant. The geneology of the applicant's family is as shown below :-

Shiddisab (A)

Siddi Mohadih	Shiddi Hasan		Siddi Huse
Siddi Maktum	Siddi Md. Hayat	Siddi Husan	Siddi Husen
Siddi Mohadin	Siddi Hasan (present in 1883).	Siddi Abdulla	Siddi Rahma
Siddisab alive in 1883).	Siddi Husen present in 1883.	Fidi-Umar Siddi Maktum	Siddi Mahamad Hayat (Present Applicant).	Sidi Modir (present i 1883).

The Common ancestor Shiddisab had 3 sons, Ms Siddi Mohadin, Siddi Hasan and Siddi - Husen. The applicant who belongs to the second branch, contends that each of these 3 branches held 0-5-4 right of Patilki service in the 2 villages. Subsequently the youngest branch lost its right of service and the remaining two branches continued to serve, each holding an equal right of eight annas in the service. He contends that his ancestor Sidi Hasanserved as Patil of these 2 villages ~~on he~~ in 1819-1820 in his own right; and also Siddi Maktum of the firs bra ch served as patil of these 2 villages on behalf of II and III branches during 1849-50. Relying on these facts the ~~applic~~ applicant requests that the order passed by the Hak Enquiry ~~offi~~ Officer in 1883 holding the first branch as the Sole Representative Watandar, being erroneous be revised and that his name

atilki Pali Register to an eight anna share in .e Patilki right of service of the two villages. In support of his contention the applicant produced some documents but the Collr. by his order dated 24-4-1946 refused to reopen the matter as the orders of 1883 are final under sec. 73(a) . of the Bom. Hereditary offices Act, 1874. In the appeal, the Commr. S.D. declined to interfere with the Hak Enquiry Order after such length of time.

The Collr. states that the documents now produced by the applicant were produced before the Enquiry Officer in 1883 and no fresh evidence has been adduced to justify revision of the previous orders. R.D. by its letter dated 12-12-1946 informed the applicant dealining to interfere in the matter.

The applicant x has approached Govt. for reconsideration of the orders at p. 95 ante. R.D. states that the provisions of clause 2 of sec. 73 of the Act do not contemplate a fresh enquiry and that the ~~xixixi~~ civil court has no jurisdiction to interfere in the matter. The T R.L.A. is requested to confirm this view.

Office of the R.L.A.

Seen and returned.

The view taken by R.D. that the Civil Court will have no jurisdiction to interfere in the matter is correct (see section 4 (a) of the Bombay Revenue Jurisdiction Act 1876).

P.M.Lad
23-8

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8607 dated the 25th August 1947.

S.C. 6/6

L.D.R.I.No. 8128/9-7-47.

Submitted.

A complaint has been lodged with Govt. that Mr. Gurappa Nagappa Kulkarni of Hattur (Taluka - Sholapur) abused and beat the Headmaster of the Village School and a question has arisen whether action can be taken against the said Kulkarni under sec. 57 of the Watan Act. In his report at p. 15 ante the D.M. Sholapur has stated in this connection that as the act complained of was done by the Kulkarni in his private capacity action under sec. 57 of the Watan Act would not be feasible and the complainant must be left to have recourse to a Court of Law. The Commr. C.D., However, desires that the question whether sec. 57 of the Watan Act applies or not should be referred for legal ~~xxxxx~~ advice. In his letter at p. 23 ante, he states :-

> "The question whether section 57 of the Watan Act, applies to any misconduct or only to misconduct committed by an officiator in respect of his official duties in a question of law on which Govt. may consul their legal advisers".

S.C. 6/6

Office of the R.L.A.

Seen and returned

Attention is invited to R.L.A.'s opinion No. 8827, dated 30-8-1947 wherein a similar question is considered.

P.M.Lad
17-9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9324 , dated the 19th September 1947.

S.C. 7/6

Office of the R.L.A

In the letter to Government dated 4th November 1932 the Collector of Surat stated.-

"A large number of Katwix Patels in this district had resigned their posts during the civil disobedience movement activities in 1930. There were some Patels who inspite of enormous social pressure refused to be disloyal even though they were subjected to organised harassment by those who marked for or sympathised with the Congress. The loyalty of those who stuck to their posts has not been awarded ... I venture to suggest that Government may be moved to grant sanads conferring the right of hereditary Patelship to the 29 Patels of this district mentioned in the accompanying list."

By G.R. (R.D.) No. 9922/28-Cpnfl. dated the 2nd December 1932 Government resolved :

"As a reward for the loyal services rendered by the 29 Patels mentioned in the list accompanying the Collector's letter Government are pleased to sanction his proposal for the grant of sanads conferring the right of hereditary Patelship on these Patels. This concession is subject to the condition that they and their lineal descendants remain loyal to Government and are fit to serve". Accordingly sanads were issued to the 29 Patels conferring on them and their lineal descendants the hereditary Patelship subject to (i) their loyalty to Government and (ii) their fitness to serve.

In 1939 H.M. (R.D.) raised the question whether the grants of sanads to the Patels conferring a hereditary right could be held to be legal. In his opinion dated 29.6.1939 the R.L.A. (Mr. Dhurandar) opined :

"The position is no doubt anomalous and not free from doubt. The Commissioner states that no watan proceedings were

But section 22 of the Bombay Hereditary offices Act, 1874 does not lay down any particular procedure for the creation of watan. As defined in section 4 of that Act hereditary office and watan propert together constitute the watans. The words "if any" in the section show that there may to cases in which no property may be ~~xg~~ attached to the watan. Although therefore it was not the intention ofGovernment to create watans, a court of law would hold that the grant of sanads in pursuance of Government Resolution No. 9922 of 1932 had the legal effect of creating such watans which would be governed by the Bombay Hereditary Offices Act.

The question now raised for the consideration of the R.L.A. in this and the linked case is how to end the Patelship created by G.R. No. 9922/28, dated 2.12.1932.

Although there is nothing in the sanads to show that the hereditary Patelship was created under the Bombay Hereditary Offices Act, still these sanads are referable to section 22 of that Act and the mere omission to recite that section in the sanads would be immaterial.

It is possible to contend that these sanads are merely in the nature contracts for the breach of which Government would at themost be liable to pay damages but could not be forced to continue these offices. Since Government is vested with statutory powers to ~~x~~ create heredi ary offices/ view would be to hold that these hereditary offices have been created under section 22 andnot by a contract. /'under section 22 of the Hereditary Offices Act thebetter view

Consequently I endorse the view taken by theR.L.A. (Mr. Dhurandar) in 1939.

There is no provision in the Bombay Hereditary Offices Act empowering Government to abolish the hereditary office. Consequently unless there is a breach of either or both of theconditions of the sanad namely (i) loyalty to Government and (ii) fitness to serve it wouldnot be legally feasible for Government to refuse to continue these hereditary offices.

Under section 299 (1) of theGovernment of India Act, 1935 no person shall be deprited of his property in British India save by authority of law. Right to a hereditary office is kind of property. Consequently if Government desires to abolish these hereditary offices it would be necessary to promote a ligislation for thepurpose; but although section 299(2) of the Government of India Act wouldnot be attracted, Government should, in equity, pay some compensation to the holders if their offices are to be abolished by legislation.

It appears that Government proposes to amend the bombay Village Panchayats Act, 1933 transferring all the powers of a revenue & Police Patel to the surpanch. If this proposal materialises, there would arise no question of abolishing these hereditary offices.

P.M.Lad

Remembrancer of Legal Affairs.

U.R. to R.D., No. 6296 dated the 18th June 1947.

XS.C. 6/6

L.D.R.I.No.7984 dt. 5.7.47.

Submitted

Please see R.L.A.'s opinion No. 6296 dated the 18th June 1947. It has been held therein that as there is no provision in the Bombay Hereditory Offices Act empowering Government to abolish watans and as section 299(1) of the Government of India Act requires that no person shall be deprived of his property save by authority of law, legislation would be necessary for abolishing watans created under sanads granted in pursuance of G.R.,R.D. No. 9922/28-Confl. dated the 2nd December 1932. R.D. office considers that by having resort to th provisions of section 21 of the General Clauses Act, 1904, the watans created under the orders of Government can be abolished and no legislatio would be necessary. R.L.A. is hence requested to reconsider his opinion. Secretary , R.D. considers that section 21 would ~~xx~~ not apply and that section 299(2) would be attracted. In the circumstances he desires R.L.A. to see the papers again (vide notes at pp. 17-19 ante). R.L.A . is accordingly shown these papers.

Office of the R.L.A.

Seen and returned.

Section 21 of the Bombay General Clauses Act, 1904 cannot be resorted to extinguish vested rights.

P.M.Lad

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8900 , dated the 2nd September 1947.

S.C. 7/6

Legal Department.
(.I.No. 19361 dt. 2.9.47.

Submitted

2. It appears that complaints were made to Government by the Villagers of Yattinhalli, Dharwar, against onelicensee of kerosene oil and sugar, who is also their village police Patil. It was ascertained from theCollector, Dharwar, that the complaints were true to some extent. The licensee had not maintained an account upto April 1947 and was found to be charging rates higher than those fixed by the District Magistrate. The matter was placed before the Taluka Price and Supply Advisory Committee and the Committee recomended that the license of the licensee shouldbe canselled and the distribution work shouldbe entrusted to the local cooperative ~~and~~ Credit Society. Hence thelicense was cancelled and distribution work was entrusted to the Society.

3. It is now desired by theC.S.D. that District Magistrate should take action against the ex-licensee under the Watan Act if his prosecution is notpossible.

4. The Collector of Dharwar (vide p. 23 ante states that as there is no sufficient evidence against the ex-licensee and as the oral evidence is conflicting and unreliable it is not possible to prosecute him.

And he continues further that as the irrequalarities of the agent were not committed by him in capacity of the Patil of Yattinhalli the provisions of the watan Act do not apply in his case and no action can be taken against him under the Act.

5. The papers have been referred to

R.L.A. for advise whether the Patil could be punished under the Watan Act.

6. Sec. ~~57 of the B'bay Hereditary Offices Act,~~ 1874

Even apart from the first two conditions, or a plain reading of the third condition, it is difficult to hold that the word "will" was advisedly used with the intent of reserving to Government the discretion of refusing the privilege. Such intention could have been best expressed by using the word "may". The word "will" has not ordinarily the significance of granting an option or of conferring a discretion. Grammatically it expresses simple future time and has the additional quality of declaring the intention of the party concerned to do a particular thing. The word "will" is also used in the second condition; and apparently it has therein itself the meaning of "shall" apart from the use of the negative words which are generally indicative of the intent that the provision is to be mandatory. Moreover, the scheme of the three conditions also shows that the underlying idea was not to reserve any discretion to Government in any case. The first condition is to the effect that the lands and cash allowances are to be continued so long as any male heir to the watan, lineal, collateral or adopted, within the limits of the watandar's family, is in existence. Where hte the adoption was made within the limits of the watandar's family, nazarana or other demand was not to be imposed, and it is even provided that permission to make such adoptions need not be obtained from Government making it clear thereby that adoption within the limits of the watandar's family was completely taken outside the scope of Government's intervention. It is only when the adoption is to be made without restriction as to family that Government comes into the picture, and the proper

nstruction to be put on the third condition is that when all the sharers of thewatan agree to make a request in that behalf , theprivilege of making such adoption without restiretion as to family has necessarily to be tranted by Government subject only to one limitation, namely, that of payment in perpetuity of annual nazarana. It follows, therefore, that so long as all the shareres agree, and so long as the payment of nazarana is assured, Government are not at liberty to refuse permission for adoption. Consequently I am inclined to agree with the view taken by the Secretary , Revenue Department.

P.M.Lad
16-9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9335 , dated the 19th September 1947.

S.C. 7/6

R.I.No. 7665
dt. 28-6-47.

Office of the R.L.A.

"Misconduct" in section 57 and "grave misconduct" in section 58 of the Bombay Hereditary Offices Act, 1874 ought, on theprinciple of interpretation of penal provisions, to be construed as referring to misconduct in the course of ~~m~~ official duties oftherepresentative watandar (see Advocate General's opinion No. 81, dated 16.8.1880 underlying G.R. R.D.No. 4576 , dated 1.9.1880). Consequently Patils and Kulkarnis who misbehave themselves or are guilty of moral turpitude in their private capacities cannot be punished under section 57 or section 58 of the Bombay Hereditary Offices Act, 1874. Attention may also be invited to section 60 which makes separate provision for criminal conduct as distinguished from misconduct. The view taken by R.D. at p. 19 ante is not correct.

P.M.Lad
29-8

Remembrancer of Legal Affairs.

U.R. to R .D., No. 8827 , dated the 30th August 1947.

S.C. 9/6

10786
13/15-9-47.

Submitted.

2. Please see Collr.'s report called for by the R.D. on petitions from Messrs. Thakkar and Patel and others at p. 23 ante. Ashavla is a binwatandari Govt. deserted village at a distance of one mile from Kanjari and about not more than a mile from Halol. The Patel of the village is in possession of the service inam lands by inheritance from hispredecessors. From village form III, it appears, that 12 Acres 27 gunthas of land assessed at Rs. 40-4-0 is assigned for remuneration of thePatel. No judi is required to b e paid by the Patel over this land and the whole of the assessment is alienated. The Collr. of Panch Mahals states that no revenue or police work is taken from thePATEL AND IT IS SIMPly a waste to continue 12 acres 27 gunthas of land in hispossession by way of remuneration. He therefore proposes to abolish thePatel s post. The Commr. N.D. doubts whether watan rights can be legally terminated without any default on thepart of the watandar and whether any land revenue (or land) given as remuneration can be resumed without any breach of the terms of the office. The R.L.A is requested to advice in thematter.

S.C. 7/6

Office of the R.L.A

Resumption of Watan
Where services of hereditary officers are not necessary.

Watan Act. Sec. 4.

The attention of the Revenue Department is invited to R.L.A.'s opinion No. 9723, dated the 29th September 1939, and the course suggested in that opinion may with advantage be followed in the present case. There appears no objection to resuming the watan by levy of full assessment.

P.M.Lad
25-11.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 11254 , dated the 25th November 1947.

S.C. 7/6

R.I.No. 12462 dt. 14-10-47.

Submitted.

2. Pl. see R.L.A.'s opinion No. 5982, dated the 7th September 1943. In accordance with this opinion Govt. directed that the Kulkarniki watan lands in Mugali and pargana watan lands in Karadge, Barwad and Kunnur of Chikodi taluka in Belgaum District belonging to the share of Govind Dashrath Deshpande and x at the disposal of Govt. under section 88(7) of theCriminal Procedure Code should be restored to Gopal Venkatesh Deshpande on the original tenure. Gopal Venkatesh died before the order was given effect to and the Collr. ofBelgaum restored the same to Mrs. Radhabai , widow of thedeceased. Before restoration these lands wer leased out annually for cultivation from 1895 to 1944 and the lease amount was credited to Govt. after deducting the amount of assessment. Mrs. Radhabai took possession of the lands in 1944 and now she requests that lease amounts credited to Govt. in the past should be paid to her. D.G.P. Belgaum who was consulted is of the opinion that as Mrs. Radhsbai came into possession of the land only after restoration and regrant of the property by the Govt. shehas no right to lease amounts credited to Govt. The Collr. and the Commr. agree with theD.G.P. that she has no right to claim the lease amounts in respect of thelands for theperiod during which they vested in Govt. R.D. stated that she wouldbe entitled to the lease amount from the date of the death of the absconders but as in this case no date of their death can be fixed her claim may be accepted from the date of application i.e. 23rd May 1942. The R.L.A' is requested to advise in the matter.

Office of the R.L.A

Restoration of watan property confiscated under section 88 of Criminal Precedure Code
Whether on restoration the heir is entitled to rent prior to restoration.

To establish the claim for the restoration of lands the deceased Gopal was required to prove the death of the absconders, which proof he could be deemed to have furnished, notwhen he applied for restoration but when it was accepted and his application was granted i.e. on 28.9.43. Consequently his widow Radhabai would be entitled to the amount credited to Government in respect of the lease of the lands for the year 1943-44.

P.M.Lad
18-12.

Remembrancer of Legal Affairs.

U.R. to R.D. No. , 13077 , dated the 18th December 1947.

S.C. 7/6

Office of the R.L.A.

e Bombay Here-
ary Act, 1874,
ction to transfer
land to the
operative Society.

It appears that the Mahadeo Tembhar Co-operative Credit Society Taluka Shirpur, advanced a loan to Mr. Bharta Sakha, Police Patil of the village Tembhar, on thesecurity of his inam land without obtaining the sanction ofthe Commissioner as required by section 5 of the Watan Act. In enforcement of that security, the Co-operative Credit Society obtained an award against the PATIL FOR THE recovery of the loan and tried to sell the land by auction. As there were no bidders, the Society wants the land to be transferred to it under section 59-A of the Bombay Co-operative Societies Act. The additional Registrar, Co-operative Societies, has requested the Commissioner to grantthe necessary sanction under section 5 of the Watan Act to transfer the land to the Co-operative Society. R.D. is of the opinion that no post facto sanction can be granted to the alienation of the land under section 5 of the Watan Act. The R.L.A. is requested to advise

The view taken by R.D., that no post facto sanction can be granted under section 5 of the Watan Act is correct. However, what the Co-operative Society has asked for is the transfer of the land under section 59-A of the Bombay Co-operative Societies Act, 1925. Section 5 of the Watan Act does notprohibit themortgages ~~Act, 1925,~~ Sanxions of a watan land by the Watandar during his lifetime. In Annaji v. Venkatesh (32 B.L.R. 1415) it was held that "the interest in watan lands of a non watandar purchaser of the right, title and interest of a watan in an auction sale comes to an end on the death of the watandar whose right, title and interest are sold". It, therefore, follows that the sale of a life interest in watan lands in execution of a mortgage decree would be perfectly competent. The life interest of the Patil in the present case in the watan land can therefore be sold in satisfaction of the balance under the award decree. Section 59-A of the Bombay CO-operative

Societies Act provides that, when inexecution of an order sought to be executed under section 59, any property cannot be sold for want of buyers. If such property is in the occupancy of the defaulter or of some person on his behalf or of some person claiming under a title created by the defaulter , etc., the Court or the Collector, as the case may be, may, with theprevious consent of the Registrar, direct thatthe said property or any portion thereof shall be transferred to the society which has applied for theexecution of the said order and that the said property or the portion shall be delivered to the society in theprescribed manner, Under this provision all that is required is the previous consent of the Registrar to the transfer. Consequently if the Registrar gives consent to the transfer of the mortgaged watan land of the Patil to the Co-operative Credit Society under section 59-A there would be no legal objection to the Society enjoying the said LAND DURING thelifetime of thePatil in satisfaction of its dues. While transferring the land the Court or the Collector, or the case may be, can attach a condition that the land should be held by theCo-operqtive society during the lifetime of the Patil and until the loan is satisfied.

P.M.Lad
14-12

Remembrancer of Legal Affairs.

U.R. to R.D.No. 13231 dated the20th December 1947.